IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 537 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIVRAJSINH BAHADURSINH JADEJA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 537 of 2003

MR HRIDAY BUCH for Petitioner No. 1-3

Mr.H.L.Jani, A.P.P. for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 01/12/2003

ORAL JUDGEMENT

1. Rule. Learned A.P.P. Mr. Jani waives service for the respondent-State. Learned Counsel Mr. R.C.Jani was heard as appearing for the original complainant.

2. This Revision Application under Section 397 of the Criminal Procedure Code has called into question the

order of the learned Additional Sessions Judge (Second Fast Track Court), Mehsana, below application Exhs.18 and 19 in Sessions Case no.109/2003 pending before him. Out of the original applicants in the said applications at Exhs.18 and 19 among whom are the three applicants herein, the present Revision was pressed only for applicants nos.2 and 3, namely, Kanubhai Jaisinghbhai and Virendrasinh Bahadursinh Jadeja respectively. By virtue of the aforesaid impugned order, the applicants had applied for being discharged under the provisions of Section 227 of the Criminal Procedure Code. After hearing the arguments addressed on behalf of the applicants, six in number, a common conclusion is in the impugned judgment, drawn to the effect that since the prosecution case is based upon conspiracy and common intention, the applicants could not be discharged at the stage of framing of the charge. As regards the applicants nos.2 and 3 in respect of whom the present revision is pressed, it is specifically observed in paragraph 18 of the impugned judgment that as far as accused nos.8, 9 and 10 were concerned the allegation is that of harbouring the other accused persons as a part of the conspiracy and common intention and that such conspiracy could be proved by circumstantial evidence. The learned Additional Sessions Judge has relied upon the judgment of the Supreme Court in STATE OF KERALA vs. P.SUGATHAN (2000 Criminal Law Reports (SC) 780. The learned Senior Counsel Mr. M.R.Barot appearing for the petitioners submitted that there was no material whatsoever in the chargesheet implicating in any manner the petitioners nos.2 and 3 in the offence with which the applicants or other accused persons are proposed to be charged.

3. The entire set of papers submitted with the charge-sheet by the Investigating Officer was produced before the Court and the learned Counsel Mr. Jani appearing for the original complainant as also the learned A.P.P. had the opportunity of going through the entire record of the case. None of the learned Counsel could point out any material which could at this stage lead to the inference that the petitioners nos.2 and 3 could be charged with even the offence punishable under Section 212 of the I.P.Code. The name of the petitioner no.2 does not find even a mention in the chargesheet papers and the name of the petitioner no.3 figures only in the Panchnama whereby a vehicle is supposed to have been produced and that vehicle in turn is alleged to have been used for harbouring the other accused persons. Thus, in short, the learned Counsel for the respondent could not point out any material to justify facing of the

trial by the two applicants.

4. The learned Senior Counsel Mr. Barot relied upon the judgment of the Supreme Court in UNION OF INDIA vs. PRAFULLA KUMAR SAMAL (AIR 1979 SC 366) to submit that while considering the question of framing charge under Section 227 of the Code, the Court has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused was made out. If two views were equally possible and the Judge was satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The judgment of the Supreme Court in SHEORAM SINGH AND ANR. vs. STATE OF U.P. (AIR 1972 SC 2555 was relied upon to submit that common intention can develop during the course of an occurrence, but there has to be cogent material on the basis of which the Court can arrive at that finding and hold an accused vicariously liable for the act of the other accused by invoking Section 34 of the Indian Penal Code. Another judgment of the Supreme Court in STATE OF KARNATAKKA vs. L. MUNISWAMY AND OTHERS (AIR 1977 SC 1489) was relied upon to show the similarity in the facts and circumstances. In the facts of that case, the State Counsel was time and again asked to point out any data or material on the basis of which a reasonable likelihood of the respondent being convicted of any offence in connection with the attempted murder of the complainant could be predicated. There was no material on the record on which any Tribunal could reasonably convict the respondents for any offences connected with the assault on the complainant. It was undisputed that the respondents were nowhere near the scene of offence at the time of the assault. In such circumstances, the apex Court held it to be a sheer waste of public time and money to permit the proceedings to continue against the respondents and upheld the order of the High Court quashing the proceedings.

5. In the facts of the present case, the trial is at the stage of framing of the charge and the entire material available so far, even if accepted as undisputed, does not indicate the involvement of the petitioners nos.2 and 3 in the acts which could amount to any offence punishable under Section 212 or 34 of the I.P.Code or any other provision of law. In such circumstances, the learned A.P.P. submitted that the possibility of involvement of the applicants in a common conspiracy hatched with common intention could not be ruled out and the evidence thereof may come on record

during the course of trial or due to further investigation. In such circumstances, the powers of the trial Court under Section 319 of the Criminal Procedure Code may be required to be invoked, and therefore, it should be clarified that order in this Revision Application would not come in the way of the trial Court in exercising its powers under Section 319 if the occasion arises for such exercise. There was no objection to this proposition.

6. In the facts and for the reasons discussed hereinabove, the application is required to be partly allowed and accordingly impugned order dated 15-10-2003 below application Exh.19 in Sessions Case no.109/2003 is required to be interfered to the limited extent.

7. In the result, this Revision Application is partly allowed and the petitioners nos.2 and 3 are ordered to be discharged with liberty to the trial Court to invoke the provisions of Section 319 in respect of these applicants also in case such occasion arises. Rule is made absolute with no order as to costs.

(D.H.Waghela,J.)
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